IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Criminal Appeal No.408-DBA of 1992

Date of decision: 05.02. 2007

The State of U.T., Chandigarh.

-----Appellant.

Vs.

Ram Avtar @ Kabooter & others.

-----Respondents.

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE H.S. BHALLA

Present: Mr. N.S. Shekhawat, Advocate
for the appellant.

Adarsh Kumar Goel, J.

This appeal has been preferred by the State against acquittal of the respondents of the charge under Section 302/460/396/411 IPC.

Learned counsel for the State points out that Chet Ram, respondent No.3 and Kumar Pal, respondent No. 4 have since died during the pendency of this appeal, appeal qua them has thus been rendered infructuous, therefore, consider this appeal only qua respondents No.1 Ram Avtar, respondent No.2 Ram Kishore and respondent No.5 Khem Pal.

Case of the prosecution is that on the night intervening 20th/21st March, 1990, the accused formed an unlawful assembly and

lurking house trespass, committed the offence of robbery and in the course of committing robbery, they committed murder of Phoolwati and caused injuries to Ram Sahai, PW-7 and four other inmates of the Jhugi (hut) and dishonestly retained in their possession property looted from the said hut as well as the adjoining huts.

FIR was registered on the statement of PW-7 Ram Sahai, to the effect that on the night of March 20/21.03.1990 at 11 P.M., he was present in his hut in Sketari Forest Range. Raj Pal, PW-9, Chotte Lal PW-19, Hira Lal, PW-8 were also present in their respective huts. He heard an alarm of Bachao-Bachao (Save-Save) from the hut of PW-8 Hira Lal. He switched on the torch in the direction of Hira Lal and saw three persons inside the hut and two outside. Those who were inside the hut, were telling Phoolwati wife of Hira Lal that they had taken the cash and she should tell the place where ornaments were kept. One of them gave knife blow in the chest of Phoolwati on her telling that she had identified them. She fell towards her front side. Another knife blow was given in her back by another intruder. Out of the five, some were having sticks and others were having knives. One of the assailants gave knife blow on left forearm of Ram Sahai. His wife Chander Kali, Raj Pal, PW-9 and Chhote Lal, PW-19 also reached the hut of Hira Lal. Chander Kali was given two blows, one on her right hand and other on the front chest and neck. Raj Pal was given two knife blows, one of right thumb and other on the left elbow apart from one stick blow. Hira Lal was given injuries on the chin and on the front of the chest. Thereafter, all the intruders went away with their respective weapons. Phoolwati succumbed to her

injuries. It was found that cash amount of Rs.3700/- and ornaments – two Kharvas, one Hassli and one wrist watch, were found missing. From the hut of Raj Pal, two Kharvas and one koka and cash of Rs.800/- were found missing. From the hut of Chhotte Lal, two Kharvas, one Hassli and Rs.2,000/- were missing. From the hut of Hira Lal, Rs.5,000/- and wrist watch were found missing. Ram Sahai then went to Jagjit Singh, Forester, who advised him to return to his hut with an assurance that he will inform the police. Police was informed. At 6 A.M., police came to the scene of occurrence and recorded statement of Ram Sahai.

After investigation, the accused were challaned. Before the trial Court, prosecution examined Ram Sahai, PW-7, Hira Lal, PW-8, Raj Pal, PW-9 and Chhotte Lal, PW19 apart from other witnesses.

After considering the evidence on record, the trial Court held that the case of the prosecution was not proved beyond reasonable doubt and acquitted the respondents, inter-alia, for the following reasons:-

(i) None of the witnesses, in their statements made to the police, named any of the accused persons, nor did they furnish any particular, from which, identification of the accused persons could be possible; after accused persons were arrested and produced in the Court on 06.04.1990, the witnesses came to know that the said accused persons were involved in the crime; if Ram Sahai, PW-7 knew the accused Ram Avtar and Ram Kishore, as deposed by him,

there was no reason for him not to have given their names in the earlier statement given to the police (Exh.PL).

(ii) The incident had taken place in mid-night and there was no light in the hut and it was doubtful whether the eyewitnesses identified the intruders; omission to mention their names or identity, supported this view.

(iii) PW-9 Raj Pal, PW-19 Chhotte Lal admitted that they did not know the names of the accused persons, at the time of incident, nor they described their role at the time, they saw the accused after the incident, for the first time on 06.04.1990.

(iv) PW-8 Hira Lal also stated that he came to know the names of the accused persons on making inquries after the incident.

(v) Extra judicial confessions made on 03.04.1990 of four of the accused, made before PW-5 Jagjit Singh, Forestor, relied upon by the prosecution could not be believed. Jagjit Singh, PW-5 stated that the accused persons had worked under him and their names were on the muster-roll. But the statement was not substantiated by producing the muster-roll.

(vi) Extra-judicial confession, claimed to have been made by Kumar Pal and Chet Ram before Jarnail Singh, PW-6, was also not proved, as the accused persons had no reason to make extra-judicial confessions before the said witnesses, as they did not know him.

(vii) Recoveries effected by PW-12 Nanha Ram, Inspector in the presence of PW-4 Ashok Kumar and Constable Sat Pal, were also not clearly proved. Evidence of Nanha Ram and Ashok Kumar did not inspire confidence. Ashok Kumar stated that his signatures were obtained on a paper. He further stated that Ram Kishore did not make any disclosure-statement in his presence. He was also unable to show how he happened to be at the police station. There were contradictions in the evidence of Nanha Ram, PW-12, Tirath Singh, PW-11 and Rachpal Singh, PW-10 about the place of recovery.

(vii) PW-2 Pushpinder Singh, Executive Magistrate deposed that ornaments recovered appeared to be new and thus, the ornaments appeared to have been got prepared subsequently. Evidence of recovery of bloodstained knife was also not reliable as blood-stains were disintegrated and their origin could not be determined.

We have heard learned counsel for the State and examined the reasons given by the trial Court for acquitting the respondents.

Direct evidence led by the prosecution is not reliable for want of identity of the accused persons. Circumstances relied upon are not clearly proved and do not form chain, which may exclude innocence of the accused persons. There may be possibility that the accused persons had committed the offence, but unless there is

evidence to connect them, they could not be convicted. Reasons given by the trial Court for acquittal of the respondents cannot be held to be unreasonable, arbitrary or perverse, so as to call for interference with the order of acquittal of the respondents.

Scope of appeal against acquittal has been gone into by the Hon'ble Supreme Court, inter-alia, in ***Jaswant Singh v. State of Haryana,*** AIR 2000 SC 1833, wherein it was observed:-

> "21**.** The principle to be followed by appellate courts considering an appeal against an order of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the order is clearly unreasonable it is a compelling reason for interference (see *Shivaji Sahabrao Bobade* v. *State of Maharashtra,* (1973 2 SCC 793: AIR 1973 SC 2622: (1973 Cri LJ 1783)). The principle was elucidated in *Ramesh Babulal Doshi* v. *State of Gujarat,* (1996) 9 SCC 225: 1996 AIR SCW 2438: AIR 1996 SC 2035 (1996 Cri LJ 2867):
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> > "While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then and then only reappraise the evidence to arrive at its own conclusions."

We, therefore, do not find any ground to interfere with the order of acquittal of the respondents.

The appeal is dismissed.

(ADARSH KUMAR GOEL)
JUDGE

February 05, 2007 **(H.S. BHALLA)**
ashwani **JUDGE**